

(f) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any written statement made by the witness.

§ 10.153 Proposed findings and conclusions; post-hearing memorandum.

Except in cases when the respondent has failed to answer the complaint, the administrative law judge, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 10.154 Initial decision of administrative law judge.

(a) The administrative law judge shall make an initial decision in the case. The decision will include (1) a statement of findings and conclusions, as well as the reasons or basis therefore with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and (2) an order of suspension or exclusion from practice, an order of reprimand, or an order dismissing the complaint. The administrative law judge shall file the decision with the Director and shall transmit a copy to the representative of the Director and to the respondent. In the absence of an appeal to the Commissioner, the decision of the administrative law judge will, without further proceedings, become the decision of the Commissioner of Patents and Trademarks thirty (30) days from the date of the decision of the administrative law judge.

(b) The initial decision of the administrative law judge shall explain the reason for any penalty or reprimand, suspension or exclusion. In determining any penalty, the following should normally be considered:

- (1) The public interest;
- (2) The seriousness of the violation of the Disciplinary Rule;
- (3) The deterrent effects deemed necessary;
- (4) The integrity of the legal profession; and

(5) Any extenuating circumstances.

[50 FR 5172, Feb. 6, 1985; 50 FR 25073, June 17, 1985]

§ 10.155 Appeal to the Commissioner.

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. If an appeal is taken, the time for filing a cross-appeal expires 14 days after the date of service of the appeal pursuant to § 10.142 or 30 days after the date of initial decision of the administrative law judge, whichever is later. An appeal or cross-appeal by the respondent will be filed and served with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal or cross-appeal, the Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. A respondent's reply brief shall be filed and served in duplicate with the Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 10.142 of an appeal, cross-appeal or copy thereof. If the Director files a reply brief, the Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the Director shall transmit the entire record to the Commissioner.

(b) The appeal will be decided by the Commissioner on the record made before the administrative law judge.

(c) The Commissioner may order reopening of a disciplinary proceeding in accordance with the principles which govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence.

(d) In the absence of an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent